IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1377 of 2005
Date of Decision: 24.08.2006

Om Parkash & Anr. ...Petitioners

Vs.

Territory Manager, Charat Petroleum Corporation Limited and Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.I.D.Singla, Advocate,
for the petitioners.
Mr.Raman Sharma, Advocate,
for respondent No.1.
Mr.Ajay Gupta, Advocate,
for respondent No.3.

Vinod K.Sharma, J. (Oral)

This revision petition has been filed against order dated 26.2.2005 passed by the learned Additional District Judge, Bhiwani vide which the appeal against the order passed by the learned Civil Judge (Junior Division), Charkhi Dadri, District Bhiwani was dismissed.

Learned courts below had dismissed the application for mandatory injunction filed by the petitioner vide which directions were sought by the plaintiff-petitioner against the defendants to continue the supply of petroleum to M/s Chaudhary Filling Station, Bond Kalan. The petitioners are the partners of M/s Chaudhary Filling Station which was

given dealership of petroleum under the Freedom Fighter Category. Earlier the said Filling Station was being run by the father of the petitioners. After his death they executed the partnership with Raj Kumar, respondent No.3, who was given 49 per cent share in the partnership deed. The case of the plaintiffs was that it had deposited a sum of Rs.3,20,000/- as per the terms and conditions of the agency but the supply of petroleum was stopped, in view of the complaint made by respondent No.3.

The defendants i.e. the Territory Manager, Charat Petroleum Corporation Limited as well as General Manager resisted the claim of the plaintiff-petitioners on the plea that a written request was received from respondent No.3 for stopping the supply as petrol pump had been captured by some anti-social elements and the cash and record of the petroleum had been robbed of and it was on the basis of the said complaint that the supply was stopped.

It was submitted by plaintiff petitioner that respondent No.3 had played a mischief and on the said basis the supply of petrol was stopped. It was also claimed that there was no likelihood of explosion in the petrol pump. It was also stated that the allegations made by respondent No.3 were mala fide and the supply could not be stopped at the instance of one partner i.e. respondent No.3 in the absence of any evidence with respect to the allegations made by him in his complaint.

It may be noticed here that the complaint filed by respondent No.3 to the police was found to be false and no case was registered on the basis of the said complaint. Even the application moved before this court seeking directions for registration of the case was rejected.

The stand taken by the respondents before the Court below

was that as there was a dispute between the partners the dealership can be terminated under Clause 17 of the Partnership Deed. It was also the case that the plaintiff-petitioners were bent upon to oust the third partner Raj Kumar and therefore, inter se dispute between the parties was to materially cause harm to the petroleum pump. It was further the case of the respondents that the supply of petroleum was stopped by the competent authority due to some bad elements who may be bent upon to cause loss to the company.

Learned lower Appellate Court by placing reliance on the judgment of Madras High Court in **Palaniyammal Vs. Sellappan** 2004 (4) RCR (Civil) 340 declined the injunction as it was held that the relief of mandatory injunction can be granted only after full trial and grant of interim mandatory injunction therefore, was illegal. Learned Court also came to the conclusion that it was incumbent upon the company to take pre-caution to prevent unauthorised person from having access to any storage, shed or installation under Clause 3 of Rule 121 of the Petroleum Rules, 2002 (for short the Rules). It was also observed that the petitioner had concealed the factum of previous litigation going on between the partners and accordingly it was held that the order passed by the learned Trial Court could not be interfered with.

Mr.I.D.Singla, learned counsel for the petitioners submitted that no order stopping the supply was placed on record. Even otherwise, the stand of the learned counsel for the petitioners was that until and unless the Agency is suspended or cancelled it is not open to the Company to stop supplies to the firm, as per the terms of memo of agreement for disbursing pump and sale licences. Learned counsel for the petitioners relied upon the

judgment of Hon'ble Supreme Court in **Mahabir Auto Stores and others Vs. Indian Oil Corporation and others AIR 1990 SC 1031** to contend that stopping of supply to the firm by the Company in the absence of notice or intimation is totally arbitrary and therefore, cannot be sustained.

The Hon'ble Supreme Court in the above cited case was pleased to hold that in the absence of notice it was not open to the Indian Oil Corporation to stop supply. The contention of the learned counsel for the petitioners, therefore, was that they had prima facie case as licence for selling petrol in terms of the memo of agreement dated 21.10.2001 was in full force which was neither suspended nor cancelled and therefore, it was not open to defendants No.1 and 2 to stop the supply merely at the behest of respondent No.3. Learned counsel for the petitioners further submitted that on account of the stoppage of supply the business of the firm had come to standstill and therefore, the balance of convenience was in favour of the petitioners and against the respondents. It was also pleaded that the plaintiff-petitioners were to suffer irreparable loss and injury. It was, therefore, prayed that the impugned orders passed by the learned courts below be set aside and the application moved by the petitioners be allowed.

Mr.Raman Sharma, Advocate, appearing for respondent No.1 vehemently argued that as per the terms of the agreement executed between the parties it was open to the Petroleum Corporation being represented by defendants No.1 and 2 to stop the supply. The contention of the learned counsel for the petitioners was that as per the terms of the agreement the company had right to take back whole or any portion of the said premises or said facilities to alter them at any time during the continuation of this licence on its own behalf.

Learned counsel for respondent No.1 further contended that in terms of Clause 10 (3) of the Agreement it was not open to the plaintiffs to change the constitution of the licenced firm nor it was competent to dissolve the partnership nor admit new members as partners nor allow any partner to withdraw from the partnership without obtaining the previous consent in writing of the company. The contention of the learned counsel for respondent No.1 was that in view of dispute between the partners, Clause 10 (s) of the Agreement stood violated and therefore, it was within the right of the Corporation to stop the supply. Learned counsel thereafter placed reliance on Clause 13 (a) (viii) to contend that if licencee commits any act which in the opinion of the Managing Director of the Company was prejudicial to the interest or good name of the company or its product, it was open to terminate the agreement forthwith. Learned counsel for respondent No.1 referred to Clause 17 of the Agreement to contend that any act done by any of the partners would be deemed to be an act done on behalf of other partners and the same shall be binding on all the partners and therefore, in view of the fact that one of the partners had written to the company for stopping the supply no fault can be found with the action of respondent No.1.

Learned counsel finally referred to Clause 11 (c) to contend that the company has an absolute right to stop the supply at any time to the licencee. It would be appropriate to reproduce Clause 11 (c) of the agreement which reads as under:

> **“11 (c)** Provided the Licensees faithfully observe and perform all stipulations in the agreement required of them hereunder will do its best at all times to supply the Licensee

> with their requirements of the Motor Spirit or H.S.D. and other petroleum products. The Company, however, shall be under, no liability if prevented from supplying Motor Spirit or H.S.D. or any other petroleum products by any cause beyond its control or for stoppage of supplies under the terms hereof."

I have considered the arguments raised by the learned counsel for respondent No.1 and do not find any force in the same. In the present case, there is no order vide which any facilities in terms of the agreement have been withdrawn or altered as claimed by respondent No.1. In the present case, there has been no change of constitution of the licencee firm. Inter se dispute between the partners cannot be said that the constitution of the firm has changed or any new partner has been inducted or removed from the partnership in terms of Clause 10 (s) of the agreement. It is also not the case that the petitioners have committed any act which may be prejudicial to the interest or good name of the company or its product as there is no complaint about the same except that there is a dispute inter se between the partners and one of the partners had made a complaint which prima facie was found to be false on investigation by the police. Neither Clause 17 of the Agreement has any application as no obligation has been created by any partner qua third party for which the other partners can be said to be bound. Reliance of the learned counsel for the petitioner on Clause 11 (c) reproduced above is also misconceived as it is not the case of respondent No.1 that the supplies have been stopped for any cause which was beyond the control of the Company. Rather, it was intentional act to help one of the partners which cannot be the basis for stoppage of supply.

My Ajay Gupta, learned counsel appearing for respondent No.3 vehemently argued that finding of learned courts below cannot be interfered with by this Court in exercise of revisional jurisdiction as the courts below have rightly held that ad-interim mandatory injunction cannot be granted till the full trial is held. It was next contended by learned counsel for respondent No.3 that the Court is bound to protect interest of all the partners and in case temporary mandatory injunction is granted and the supply is restored interest of respondent No.3 would be adversely affected as deliberate attempt is being made to remove him from the partnership even though he holds 49 per cent share.

This contention also is totally misconceived as the stand taken is prima facie contrary to the settled law that no partner can be allowed to act against the interest of the firm. In the present case, respondent No.3 while being a partner of the firm is acting against the interest of the partnership firm. The continuation of supply did not, in any way, affect his interest. It is not disputed by learned counsel for respondent No.3 that the complaint made against the petitioners has been found to be false on investigation by the police. It is also admitted that this Court did not issue any directions for registration of the case by holding that no case was made out.

On consideration of the arguments raised by the learned counsel for the parties this Court has come to the conclusion that the impugned orders passed by the learned courts below cannot be sustained. It would be seen that in view of the decision of the Hon'ble Supreme Court in the case of **Mahabir Auto Stores and others Vs. Indian Oil Corporation and others** (supra) it would be clear that the action of respondents No.1 and

2 in stopping the supply without notice is totally arbitrary and therefore, the petitioner has a prima facie case in his favour. The action of the respondents has resulted in stopping the business of the firm during the subsistence of the agency which has neither been cancelled nor revoked nor there is any violation of the terms and conditions of the said agreement as referred to above and therefore, the balance of convenience is in favour of the petitioners and they would suffer an irreparable loss if ad-interim mandatory injunction is not granted.

The only ground taken by the learned courts below in declining the mandatory injunction is the law laid down by Hon'ble Madras High Court in the case of **Palaniyammal's** case (supra). However, that decision has to be read on the facts of that case as the said decision is contrary to the law laid down by Hon'ble Supreme Court in **Dorab Cawasji Warden Vs. Coomi Sorab Warden and others AIR 1990 SC 867** wherein the Hon'ble Supreme Court has been pleased to lay down that when irreparable injury is likely to be caused to the plaintiff and balance of convenience was also in his favour interim mandatory injunction against the vendors and vendees regarding possession can be issued. It is the settled law that normally ad-interim injunction in the mandatory form normally is not to be issued but in a given case if the circumstances so warrant the same can be issued.

In the present case, it would be seen that except for the complaint of respondent No.3 there is no material, whatsoever, for defendants No.1 and 2 to stop the supplies. In any case, they had no such right to stop the supplies during the subsisting agreement between the parties unless the same was suspended or cancelled in accordance with the

law. No such action was taken in the present case.

In view of what has been stated above, the impugned orders cannot be sustained and accordingly are set aside and application moved by the petitioners under Order 39 Rules 1 and 2 of the Code of Civil Procedure is hereby allowed and the defendants No.1 and 2 are directed to continue the supply unless any action with regard to the cancellation of the agreement is taken by them in accordance with law.

(Vinod K.Sharma)
24.08.2006 Judge
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